IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE THIRTIETH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO: 21259 of 1996

Between:

G.Papaiah S/o.Sri Kondaiah,
R/o.Ongole Prakasam District

..... PETITIONER

AND

1 The State of A.P Rep.by its Principal Secretary to Govt.,Education Dept. Secretariat Buildings Hyderabad.
2 The Commissioner of Collegiate Education, A.P Hyderabad.
3 Samavesam of Telugu Baptist Churches Rep.by its Secretary and Honorary Educational Secretary, C.A.M.Compound Nellore.
4 A.B.M.Degree College Rep.by its Correspondent
Ongole Prakasam District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ or order or direction more particularly one in the nature of Writ of Mandamus declaring as illegal and arbitrary the action of the Respondents 2 and 3 in not regularising the period of service of the petitioner between 29-07-1993 and 31-05-1994 by paying salary and allowances and increment for the said period and issue a consequential direction to pay salary and allowance and increment for the said period with interest and pass such other order or orders as this Hon'ble court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner: MR.D.V.SITARAMAMURTHY

Counsel for the Respondents 1 & 2: GP FOR HIGHER EDUCATION

Counsel for the Respondent No.3&4: MR. P.SRIDHAR REDDY

The Court made the following:

HONOURABLE SRI JUSTICE B.PRAKASH RAO

WRIT PETITION NO.21259 OF 1996

ORDER:

Heard both sides.

2. The petitioner, who has been working as a part-time Lecturer with the respondent No.4, files this writ petition *inter alia* seeking for a writ of Mandamus declaring the action of the respondents 2 and 3 herein, firstly in not regularizing the period of service, and secondly in not paying the salary for the period between 29.07.1993 to 31.05.1994 along with all other allowances to which he is entitled to, as illegal and arbitrary.

3. The case of the petitioner in brief is that initially he was appointed as a part-time Lecturer with the respondent No.4 on 21.11.1981. Thereafter, as per the orders dated 27.07.1993, the petitioner was transferred to other District. Against which, he carried the matter in appeal to the respondent No.2, which was allowed as per orders dated 18.11.1993, setting aside the order of transfer dated 27.07.1993. In spite of such order and in spite of filing of several representations, the same could not be given effect and nor the petitioner paid any salary. Ultimately, after persuasion, the petitioner was re-instated on 31.05.1994. In spite of the same, neither the petitioner was regularized nor the salaries, which he is entitled along with benefits were paid for the aforesaid period namely from 29.07.1993 to 31.05.1994. Hence, the writ petition.

4. The learned counsel appearing for the petitioner submits that having regard to the fact that it is an aided post and the orders of transfer having been set aside, he is entitled to all the benefits from the date of transfer, till he was taken in service back again. Further it is also pointed out that the orders passed in appeal setting aside the orders of the transfer have not been challenged by any of the parties.

5. The learned counsel appearing for the respondents 1 and 2 submits that having regard to the fact that the Governmental authority itself has allowed the appeal on 18.11.1993 by setting aside the order of transfer, it is for the

Management to take back the petitioner, extract his service and to pay the salary, but the same cannot be thrust on the Government for the fault committed by the Management.

6. The learned counsel appearing for the 4th respondent submits that having regard to the fact that the said post being an aided post, its liability is co-extensive and is joint one along with the Government, and therefore, the 4th respondent-Management cannot be forced to make the payment.

7. Having considered the submissions made by the learned counsel and also on perusal of the record, it is only a question that falls for consideration is:

> "Whether the petitioner is entitled to regularisation and also the payment of salaries for the aforesaid period i.e., from 29.07.1993 to 31.05.1994?"

8. Basically, there is no dispute in regard to the fact that the petitioner was an employee having been appointed on 21.11.1981 and continued in service and ultimately, he was sought to be transferred on 27.07.1993, against which the appeal filed by him, before the second respondent, was allowed on 18.11.1993. In spite of the same, the petitioner was not taken back and the said orders were not implemented.

9. There is absolutely no decision or any reason forthcoming on behalf of the 4th respondent as to why the petitioner could not be taken back into service immediately after the appeal has been allowed. Having regard to the fact that the said order of transfer dated 27.07.1993 was set aside in appeal, it only presumes that there is no such order of transfer and the petitioner continues to be in service and it is for the 4th respondent to give the appropriate posting and extract the work. Any dereliction of the said obligation on the part of the 4th respondent cannot deprive the petitioner's vested rights.

10. Further in view of the fact that the said post is an aided one, the liability is joint, and one cannot shirk the same on the ground that the other has not implemented. The Government and the authorities are fully aware of the fact that in spite of allowing of the appeal on 18.11.1993, the 4th respondent did not take back the petitioner into service and no action has been taken by them

either for withdrawing the aid or the cancellation of demand etc., as normally contemplated in the law. No other valid reason is also forthcoming on their side as to the silence kept by them.

11. In view of conjoint inaction on the part of the respondent No.4 and the other respondents herein, the petitioner is being denied of his legitimate rights to which he is entitled to under the law. Either of the respondents cannot play with such substantive rights and no one can act in such a manner so as to prejudice the rights and interests of the petitioner.

12. In the circumstances, the writ petition is allowed. The respondents 1, 2 and 4 are directed to consider the petitioner's case for regularization and also for payment of the salaries and other allowances and benefits to which he is entitled to under the law for the period from 29.07.1993 to 31.05.1994. The entire exercise shall be completed within a period of three months from the date of receipt of a copy of this order. No order as to costs.

B.PRAKASH RAO, J

30th November, 2004

SKM

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this

Tuesday the 30th day of November Two thousand and Four.

REGISTRAR

TO

1 The Principal Secretary to Govt., State of A.P Education Dept. Secretariat Buildings Hyderabad.
2 The Commissioner of Collegiate Education, A.P Hyderabad.
3 The Secretary and Honorary Educational Secretary, Samavesam of Telugu Baptist Churches C.A.M.Compound Nellore.
4 The Correspondent, A.B.M.Degree College, Ongole,Prakasam District.

5. Two C.Cs to G.P. for Higher Education, High Court

Buildings, High Court of A.P., Hyderabad, (OUT)

6. Two C.D. Copies.